

REMARKS

Claims 1, 3, 5-8, 10, 12-15, 17, 19-21, and 26 are pending in the application.

Claims 1, 3, 5-8, 10, 12-15, 17, 19-21, and 26 stand rejected.

Claims 1, 3, 5, 7, 8, 10, 12, 14, 15, 17, 19, 21, and 26 have been amended.

Support for the amendments can be found at ¶¶ [0029] –[0030] of the specification, for example.

Rejections under 35 U.S.C. §103

Claims 1, 3, 5-8, 10, 12-15, 17, 19-21, and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Federwisch, U.S. Patent No. 6,889,228 (Federwisch) in view of Patterson et al., “SnapMirror: File System Based Asynchronous Mirroring for Disaster Recovery” (Patterson). *See* Final Office Action, p. 2. In light of the foregoing amendments and following remarks, Applicant respectfully requests the Examiner’s reconsideration and reexamination of all pending claims.

In response to Applicant’s arguments filed in response to the Office Action dated February 5, 2008, the Final Office Action states that “Federwisch’s system is **both asynchronous and periodical** replication, each pair of replication as shown in Federwisch’s Fig. 2 is implemented using SnapMirror asynchronous periodical replication.” *See* Final Office Action, p. 8 (emphasis in the original). Thus, for at least the reason that independent claims 1, 3, 8, 10, 15, and 17 have been amended to recite “asynchronously, aperiodically replicating data,” Applicant respectfully submits that the combination of Federwisch and Patterson fail to teach all the limitations of the independent claims. The amended claims require the appropriate data to be

asynchronously but not periodically replicated. For at least this reason Applicant respectfully requests the withdrawal of this rejection against all claims.

CONCLUSION

In view of the amendments and remarks set forth herein, the application and the claims therein are believed to be in condition for allowance without any further examination and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to Deposit Account 502306.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Eric A. Stephenson', with a long horizontal line extending to the right.

Eric A. Stephenson
Attorney for Applicants
Reg. No. 38,321
Telephone: (512) 439-5093
Facsimile: (512) 439-5099